

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Adler	Team: Squad #1	CCRB Case #: 202004086	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 06/04/2020 11:51 PM	Location of Incident: In front of 821 Franklin Avenue; in front of 843 Franklin Avenue	Precinct: 71	18 Mo. SOL 12/4/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 06/08/2020 4:48 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 06/08/2020 4:48 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			
3. POM Sean Needham	25649	950940	071 PCT
4. POM Julio Martinez	07078	958882	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Sohaib Rasool	19491	959920	071 PCT
2. LT Valerie Duchon	00000	941959	067 PCT
3. POM Anton Baird	08458	956407	071 PCT
4. POM Remy Jeanfrancois	24399	950632	067 PCT
5. POM Nazir Raghubir	18318	966793	067 PCT
6. POF Alodia Rodriguez	09833	947837	071 PCT
7. SSA Alfred Kelley	01974	924682	071 PCT
8. POM James Elliott	21119	951710	067 PCT
9. POM Darren Zhumi	11346	966410	069 PCT
10. POM Nicholas Schiraldi	26039	958061	067 PCT
11. POM Francisco Diaz	27416	952677	071 PCT
12. POM Adam Elmaadawy	10563	956618	071 PCT
13. POM Robbie Boodoo	17247	960266	071 PCT
14. SGT Martin Cunningham	02100	946888	071 PCT
15. POM Jonathan Landro	13790	966154	071 PCT
16. POM Majid Mirza	09566	956102	071 PCT
17. LT Daniel Guida	00000	941862	071 PCT
18. POM Joseph Blum	20360	957389	067 PCT
19. POM Fabian Modesto	08846	950897	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
20. CPT James Hepworth	00000	923441	071 PCT
21. POM Israel Sirota	09108	958079	076 PCT
22. DI Ludwig Romero	00000	926355	071 PCT
23. SGT Gesner Charles	03036	925061	071 PCT
24. POM Michael Hughes	08346	960691	071 PCT
25. INS Dennis Fulton	00000	901574	PBBS
26. CPT Tao Chen	00000	934627	071 PCT
27. AC Brian Conroy	00000	875187	PBBS
28. POM Michael Bresnahan	9357	952489	067 PCT
29. DTS Philip Longo	00485	955080	E S U
30. POM Michael Haber	11401	955967	071 PCT
31. POM Clifford Scanlon	06416	961253	071 PCT
32. LT Matthew Oetting	00000	949412	PBBS
33. DTS Peter Connolly	06354	925109	E S U
34. POM Mirsad Radoncic	24382	967272	071 PCT
35. POM Antonious Michael	11215	960942	071 PCT
36. POM Kevin Adair	15183	955706	071 PCT
37. DTS Michael Baratta	3356	950046	071 PCT
38. CPT Elissa Carlies	00000	917054	078 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Sean Needham	Abuse: In front of 821 Franklin Avenue in Brooklyn, Police Officer Sean Needham threatened § 87(2)(b) with the use of force.	
B. Officers	Abuse: On Franklin Avenue between Eastern Parkway and Union Avenue in Brooklyn, officers threatened individuals with the use of force.	
C.POM Julio Martinez	Force: In front of 843 Franklin Avenue in Brooklyn, Police Officer Julio Martinez struck § 87(2)(b) with a baton.	
D.POM Julio Martinez	Force: In front of 843 Franklin Avenue in Brooklyn, Police Officer Julio Martinez used physical force against § 87(2)(b)	
E. Officers	Force: In front of 843 Franklin Avenue in Brooklyn, officers struck § 87(2)(b) with a baton.	
F. Officers	Force: In front of 843 Franklin Avenue in Brooklyn, officers used physical force against § 87(2)(b)	
G. An officer	Discourtesy: In front of 843 Franklin Avenue in Brooklyn, an officer spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

Case Summary

On June 8, 2020, § 87(2)(b) filed this complaint via the CCRB online complaint form on behalf of himself and unidentified individuals.

On June 4, 2020, at approximately 11:50 P.M., § 87(2)(b) arrived at the corner of Eastern Parkway and Franklin Avenue in Brooklyn, where a large crowd of civilians and officers were gathered. Protests against police brutality were ongoing across New York City at the time; that night, one such protest took place at the Barclays Center, approximately 1.5 miles away. Officers from multiple commands had arrived on scene in response to a radio message for assistance from Lt. Daniel Guida of the 71st Precinct regarding an incident at 320 Eastern Parkway. Many of these officers were previously stationed at the Barclays Center protest and at the 71st Precinct stationhouse in anticipation of protests occurring there. Among numerous others, officers who responded included AC Brian Conroy and Ins. Dennis Fulton of Patrol Borough Brooklyn South; DI Ludwig Romero, Capt. Tao Chen, Capt. James Hepworth, PO Sean Needham, PO Michael Hughes, PO Sohaib Rasool, and PO Clifford Scanlon of the 71st Precinct; PO Joseph Blum, PO Fabian Modesto, and PO Julio Martinez of the 67th Precinct; and Capt. Elissa Carlies of the 78th Precinct. § 87(2)(b) began filming the incident, after which time, in front of 821 Franklin Avenue, PO Needham threatened to push him (**Allegation A, Abuse of Authority:** § 87(2)(g)). The crowd moved onto the roadway of Franklin Avenue, where civilians stood and shouted protest slogans, while officers faced them. Officers then advanced towards the civilians, chasing them south on Franklin Avenue while allegedly holding their batons in an upright, ready-to-hit position (**Allegation B, Abuse of Authority:** § 87(2)(g), § 87(2)(b)). § 87(2)(b) followed several officers who were chasing one of these civilians. As § 87(2)(b) approached the location where this individual was on the ground surrounded by officers, PO Martinez and two unidentified officers pushed § 87(2)(b) with their batons and ultimately pushed him into scaffolding, causing bruising (**Allegations C and D, Force:** § 87(2)(g)) and **Allegations E and F, Force:** § 87(2)(g)). During that interaction, an unidentified officer told § 87(2)(b) to “get the fuck back,” (**Allegation G, Discourtesy:** § 87(2)(g), § 87(2)(b)). § 87(2)(b) left the scene and returned home shortly after this interaction. § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) was not arrested or issued any summonses in relation to this incident.

The investigation obtained BWC footage from PO Rasool, PO Baird, PO Needham, Lt. Duchon, PO Jeanfrancois, PO Raghubir, Det. Longo, PO Bresnahan, and PO Hughes (**01-14 Board Review**). The investigation also obtained four videos from Technical Assistance Response Unit (TARU) surveillance cameras installed on the northeast corner of Franklin Avenue and Union Street and near the northeast corner of Eastern Parkway and Franklin Avenue (**15-16 Board Review**), five surveillance videos from nearby businesses (**17-21 Board Review**) and seven videos from social media sites (**22-23 Board Review**). Additionally, § 87(2)(b) provided the investigation with two cell phone videos that he recorded (**24-25 Board Review**).

Findings and Recommendations

Allegation (A) Abuse of Authority: In front of 821 Franklin Avenue in Brooklyn, Police Officer Sean Needham threatened § 87(2)(b) with the use of force.

It is undisputed that on June 4, 2020, officers arrived at 320 Eastern Parkway in Brooklyn in response to Lt. Guida’s radio call for assistance with crowd control after officers attempted to break up a

barbecue in the front courtyard of that building. Numerous officers who arrived had previously been stationed at the Barclays Center protest or at the 71st Precinct stationhouse, where a protest was expected to occur. While officers were arresting individuals inside and outside the building, a group of civilians began to form on the southwest corner of Eastern Parkway and Franklin Avenue. At that time, § 87(2)(b) approached the same corner and began recording the incident on his cell phone. The incident at 320 Eastern Parkway is part of case 202004038.

During his interview, § 87(2)(b) stated that when he approached the corner of Franklin Avenue and Eastern Parkway, he saw a crowd of at least 30 civilians and 40 officers, as well as police vehicles with their lights activated (**26 Board Review**). While standing approximately 100 feet away from the crowd and recording with his cell phone, § 87(2)(b) heard someone in the crowd start to scream but could not hear what they were saying. He moved into the roadway of Franklin Avenue so that he was standing approximately 12 to 15 feet away from the crowd. There were two vehicles between § 87(2)(b) and the crowd: a marked police vehicle stopped in the middle of the road and a parked civilian vehicle. It seemed to § 87(2)(b) that the officers were trying to disperse the crowd on the corner. While still standing in the same spot beside the marked police vehicle, PO Needham and PO Hughes moved between § 87(2)(b) and the vehicle. PO Needham told § 87(2)(b) to move back, stating that he would not guide § 87(2)(b) away but rather would push him. PO Hughes then used both his hands to firmly guide § 87(2)(b) away in a non-aggressive manner.

At 1:13 minutes in § 87(2)(b)'s cell phone video attached to IA 18, numerous officers and civilians are standing on the sidewalk of the southwest corner of Eastern Parkway and Franklin Avenue (**24 Board Review**). While it is unclear how many civilians are present, there are enough that they are packed on the corner sidewalk with little room in between each civilian. § 87(2)(b) is on the opposite corner when civilians in the crowd begin to yell. Several civilians have their hands up in the air. Multiple officers run toward the area and § 87(2)(b) does the same. At 1:36 minutes, PO Needham stands in front of § 87(2)(b) and states, "I'm not going to yell at you. I'm going to push you. Let's go. Come on. On the sidewalk. You can film on the sidewalk."

At 0:42 minutes in PO Hughes's BWC attached to IA 438, PO Hughes and other officers run toward the southwest corner of Eastern Parkway and Franklin Avenue (**14 Board Review**). At 0:55 minutes, PO Hughes touches § 87(2)(b) first on his chest and then on his back and guides him out of the street, toward the sidewalk. § 87(2)(b) is filming the incident on his cell phone. There is no audio in this portion of the video.

PO Needham testified that he had been assigned to stationhouse security for the 71st Precinct because a protest was expected to occur at the location (**27 Board Review**). He responded to the incident location after receiving a radio message for a call for assistance at 320 Eastern Parkway. After assisting with arrests at 320 Eastern Parkway, he was walking past the corner of Eastern Parkway and Franklin Avenue when he heard glass bottles shatter. He then stopped to help disperse the crowd of civilians that had gathered in that area. PO Needham did not independently recall § 87(2)(b) or remember interacting with him. After watching § 87(2)(b)'s cell phone video attached to IA 18 from the 1:30 to the 1:51 minute mark, PO Needham stated that he still did not recall the interaction but recognized himself in the video and believed that he had said, "I'm not going to guide you, I'm going to push you." He stated that he probably said this because he and other officers had instructed civilians to get back several times and they had not done so.

PO Hughes testified that he responded to the location from a nearby footpost after receiving a radio message for a 10-13 or a request for assistance at Franklin Avenue and Union Street (**28 Board Review**). Once on scene, he assisted with dispersing a group of civilians who were standing in the roadway of Franklin Avenue, slightly south of Eastern Parkway. The civilians were refusing lawful

orders to disperse onto the sidewalk. PO Hughes was alerted to the situation from hearing other officers tell people to get onto the sidewalk because they were disrupting traffic. PO Hughes followed other officers' leads and began to tell people to get on the sidewalk. He then saw § 87(2)(b) who was standing in the roadway and filming, instructed him to stand on the sidewalk, and guided him there. He did not recall any other officers interacting with § 87(2)(b). He was familiar with PO Needham but did not recall seeing him on scene.

According to NYPD Patrol Guide Procedure 221-01, officers may use force “when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody,” **(29 Board Review)**. All uses of force “must be reasonable under the circumstances.” When “appropriate and consistent with personal safety,” officers are to use de-escalation techniques. In situations where this is not safe or appropriate, officers are to “use only the reasonable force necessary.” To determine whether use of force is reasonable, officers should consider the “nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number of subjects in comparison to the number of MOS; size, age, and condition of the subject in comparison to the MOS; subject’s violent history, if known; presence of hostile crowd or agitators; and subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.”

According to NYPD Patrol Guide Procedure 221-02, in situations where de-escalation techniques fail or are not appropriate, officers are to “advise the offender that physical force or other devices (e.g., O.C. pepper spray, shield, baton/asp, etc.) will be used to handcuff/restrain him/her before applying such force, if appropriate,” **(30 Board Review)**.

Patrol Guide Procedures 221-01 states that officers should use de-escalation technique only if doing so is “appropriate and consistent with personal safety.” § 87(2)(g)

§ 87(2)(b) was walking into the roadway and toward the crowd while officers were trying to disperse it, § 87(2)(g)

Allegation (B) Abuse of Authority: On Franklin Avenue between Eastern Parkway and Union Avenue in Brooklyn, officers threatened individuals with the use of force.

It is undisputed that after § 87(2)(b) encountered PO Needham, a group of approximately 10 to 20 civilians gathered in the roadway of Franklin Avenue between Eastern Parkway and Union Avenue while yelling protest slogans. Approximately 15 to 20 officers gathered in a group facing the civilians. The officers then advanced toward the civilians and pursued them south on Franklin Avenue.

During his interview, § 87(2)(b) stated that after approximately 30 seconds of the civilians shouting protest slogans, officers told them to get out of the street and move away **(26 Board Review)**. Then, while holding their batons upright, the officers began to chase the civilians south on Franklin Avenue.

During their CCRB interviews, PO Needham, PO Hughes, PO Martinez, PO Rasool, Capt. Chen, Capt. Hepworth, Ins. Fulton, PO Blum, PO Scanlon, DI Romero, and Capt. Carlies stated that they arrived on scene in response to a radio message for a 10-13, or an officer needing assistance, at the

location (**27, 28, 31-35, 37-40 Board Review**). Ins. Fulton and Capt. Carlies stated that they had been stationed at the Barclays Center protest and responded from there after hearing the radio message. AC Conroy testified that he was driving back from a protest nearby, possibly at Brooklyn Museum, Barclays Center, or Grand Army Plaza, when he saw the encounter at 320 Eastern Parkway and stopped to assist (**41 Board Review**).

PO Needham, PO Martinez, PO Rasool, Capt. Chen, Capt. Hepworth, and Ins. Fulton all acknowledged being in the immediate area and verbally instructing civilians to disperse (**27, 31-35 Board Review**). They and PO Hughes, PO Modesto, PO Blum, PO Scanlon, Capt. Carlies, DI Romero, and AC Conroy testified that they did not hold their batons in an upright or over-the-shoulder position while pursuing or facing the civilians and did not recall seeing any other officers do so (**27, 36-41 Board Review**).

At 2:27 minutes in § 87(2)(b)'s cell phone video attached to IA 18, approximately 15 civilians stand on the roadway of Franklin Avenue, just north of the intersection with Union Street, facing approximately 20 officers (**24 Board Review**). A civilian states, "Hands up." Most of the civilians have their hands in the air. Several civilians chant "George Floyd! Don't shoot! I can't breathe." At 3:05 minutes, officers advance toward the civilians and begin to chase them. Several officers are holding their batons in a downward position. No officers are visible holding their batons in an upright position.

In addition to § 87(2)(b)'s cell phone video, the following footage shows this portion of the incident: a social media video attached to IA 119 as "Video 5" from the 4:30 to the 4:57 minute mark (**23 Board Review**); PO Rasool's BWC attached to IA 629 from the 1:58 to the 2:26 minute mark (**01 Board Review**); Lt. Duchon's BWC attached to IA 634 from the 2:46 to the 3:17 minute mark (**04 Board Review**); PO Jeanfrancois's BWC attached to IA 633 from the 1:55 to the 2:24 minute mark (**05 Board Review**); PO Bresnahan's BWC attached to IA 442 from the 0:36 to the 0:55 minute mark (**12 Board Review**); and TARU Camera 2 attached to IA 124 from the 50:37 to the 51:01 minute mark (**15 Board Review**). Together, this footage shows numerous angles of police officers chasing civilians south on Franklin Avenue. While many officers have their batons in their hands, none are holding them in an upright or over-the-shoulder position.

§ 87(2)(g) numerous videos show the relevant portion of the incident from multiple different angles and do not show any officer holding their baton in the position that § 87(2)(b) described. § 87(2)(g)

Allegation (C) Force: In front of 843 Franklin Avenue in Brooklyn, Police Officer Julio Martinez struck § 87(2)(b) with a baton.

Allegation (D) Force: In front of 843 Franklin Avenue in Brooklyn, Police Officer Julio Martinez used physical force against § 87(2)(b)

Allegation (E) Force: In front of 843 Franklin Avenue in Brooklyn, officers struck § 87(2)(b) with a baton.

Allegation (F) Force: In front of 843 Franklin Avenue in Brooklyn, officers used physical force against § 87(2)(b)

Allegation (G) Discourtesy: In front of 843 Franklin Avenue in Brooklyn, an officer spoke discourteously to § 87(2)(b)

It is undisputed that some of the officers who chased civilians south on Franklin Avenue pursued Individual 1, an unidentified black male possibly named § 87(2)(b) who was wearing a gray hoodie. § 87(2)(b) followed them, while continuing to record a video on his cell phone. Just south of

the intersection of Franklin Avenue and Union Street, officers apprehended Individual 1. Interactions between officers and several of the individuals arrested on Franklin Avenue near the intersection with Union Street, including Individual 1, are part of case 202004038. Allegation C is unalleged and being pleaded based on video footage.

During his interview, § 87(2)(b) stated that after following the officers chasing Individual 1, he saw four or five officers surrounding Individual 1, who was on the ground **(26 Board Review)**. While standing approximately 10 feet away, § 87(2)(b) saw officers swinging their batons at Individual 1 and heard batons hitting bone. § 87(2)(b) yelled, “Why are you hitting him?” Two to three seconds later, three additional officers in navy blue uniforms and helmets stood in front of § 87(2)(b) blocking his view of the officers and Individual 1. Unidentified officer 1, who stood directly in front of him, was a dark-haired white male with a goatee, at least 35 years old, taller than 6’ tall and at least 220 to 230 pounds. Unidentified officer 2, who was standing to § 87(2)(b)’s left, was a darker-skinned Hispanic male with black hair, 28 to 35 years old, 6’ tall, and very muscular. Unidentified officer 3, standing on § 87(2)(b)’s right, was a white male, who was at least 39 years old, shorter and heavier than the other two officers, and paler skinned than officer 1. All three officers held their batons horizontally with one hand on either end. While § 87(2)(b) was holding his cell phone above his head, the first officer pushed § 87(2)(b)’s left forearm twice with his baton. The second officer then pushed § 87(2)(b)’s left arm above his elbow with his baton. The third officer pushed his baton into § 87(2)(b)’s right arm, just above his elbow. These actions were painful and caused light bruising on § 87(2)(b)’s arm. By pushing § 87(2)(b) with their batons, the officers pushed him into the scaffolding, causing severe bruising on the right side of § 87(2)(b)’s torso.

§ 87(2)(b)’s girlfriend, testified in her phone statement that after § 87(2)(b) returned home, he showed her that he was bruised on his upper arm on one side of his body **(42 Board Review)**. He told her that he had gotten the bruise when officers shoved him. The following day, § 87(2)(b) noticed a bruise approximately the size of a silver dollar on the lower part of § 87(2)(b)’s back.

At 2:27 minutes in § 87(2)(b)’s cell phone video attached to IA 18, Individual 1 is among the people in the crowd of civilians standing on the roadway of Franklin Avenue **(24 Board Review)**. At 3:06 minutes, the officers advance toward the civilians, many of whom turn around and run. At 3:15 minutes, Individual 1 runs east onto Union Street and then turns back onto Franklin Avenue, where he runs south. Several officers chase him and § 87(2)(b) runs follows them. At 3:28 minutes, several officers, including one wearing a white shirt, surround Individual 1, who is on the ground. At 3:35 minutes, officers yell at § 87(2)(b) to back up. One officer says, “Get the fuck back.” The footage is blurry so that the officers surrounding Individual 1 and speaking to § 87(2)(b) are not visible. It is not clear from the footage how close § 87(2)(b) is to the officers while they are apprehending Individual 1.

None of the other video footage retrieved by the investigation shows a clear view of the area where § 87(2)(b) was standing at the time that the alleged force and discourtesy took place.

PO Needham, PO Martinez, PO Rasool, Capt. Chen, Capt. Hepworth, Ins. Fulton, and Capt. Carlies testified that they saw or heard civilians throwing glass bottles in the vicinity of Franklin Avenue and Eastern Parkway **(27, 31-35, 39 Board Review)**. Capt. Hepworth testified that the one of these bottles shattered the front windshield of his vehicle, which served as the impetus for dispersing the crowd since it had become violent.

PO Needham, PO Hughes, PO Martinez, PO Rasool, Capt. Chen, Capt. Hepworth, Ins. Fulton, PO Blum, PO Scanlon, Capt. Carlies, DI Romero, and AC Conroy all testified that they were unable to

identify the subject officers based on § 87(2)(b)'s descriptions (27, 28, 31-35, 37-41 Board Review). Each of these officers also testified that they did not tell § 87(2)(b) or any civilian to “get the fuck back” and did not recall hearing any other officer do so. Additionally, they all stated that they could not identify the voice making this statement in § 87(2)(b)'s recording and that it was not their own voice. PO Needham, PO Blum, PO Rasool, Capt. Chen, Capt. Hepworth, DI Romero, and Ins. Fulton all testified that they did not push § 87(2)(b) with their batons and did not see any other officer do so. PO Scanlon, PO Hughes, Capt. Carlies, and AC Conroy testified that they were not in the immediate area at the time.

Capt. Chen, Ins. Fulton, Capt. Carlies, DI Romero, and AC Conroy testified that they did not issue any commands to officers regarding dispersing the crowd on Franklin Avenue or regarding use of force (33, 35, 39-41 Board Review).

PO Martinez testified that he and other officers were attempting to disperse the crowd of approximately 30 civilians who had gathered in the roadway of Franklin Avenue (31 Board Review). The majority complied with instructions to disperse, but the few who remained threw approximately five bottles at the officers. No bottles hit PO Martinez and he did not know if they hit any other officers. PO Martinez and other officers then continued to verbally instruct civilians to disperse. While PO Martinez did not effect any arrests, he assisted officers who were doing so by ensuring that they had sufficient room around them and that other civilians were not standing too close. He stated that a civilian would be considered too close if they were less than five feet away while officers were arresting someone. PO Martinez stated that he was “probably” involved in clearing civilians away from the area where Individual 1 was being apprehended, although he did not recall § 87(2)(b) or the specific instance. These civilians were screaming and standing less than five feet away from the ongoing arrest while recording video. PO Martinez and other officers cleared these civilians away by telling them to back up while holding his baton in his hand. He stated that he “probably did” hold the baton lengthwise and push it into the shoulders of some of these individuals. He chose to push the baton into the civilians’ shoulders because it was the area facing him and he did not want to hit their chest. Nobody instructed him to use this tactic at the time, but he was taught to use it at the Police Academy in situations involving large crowds where he had to create distance. Other officers were using the same tactic in the area but PO Martinez did not recall who these officers were. He did not specifically recall § 87(2)(b) or shoving or pushing § 87(2)(b) with or without his baton.

Ins. Fulton testified that the tactic § 87(2)(b) described is one that officers are permitted to use to protect themselves (35 Board Review). By using this technique, officers form a barrier so that they cannot be struck. He did not recall seeing officers use the technique in that area or specifically against § 87(2)(b).

Capt. Hepworth testified that after the glass bottle hit and shattered his windshield, he instructed officers to disperse the crowd (34 Board Review). He did not recall which officers these were. He was uncertain if other supervisors present instructed other officers to do the same thing since he was not within earshot of another supervisor. When asked if he instructed officers about the use of force, Capt. Hepworth stated that that was not something that would usually be done. Instead, it would be up to each officer’s own discretion based on what they saw individually. Capt. Hepworth testified that the tactic § 87(2)(b) described was one that officers are allowed to use to disperse crowds. He stated that he used the same tactic while dispersing the crowd on Franklin Avenue. Specifically, while issuing verbal directives to civilians and telling them to disperse, Capt. Hepworth held his baton with one end in either hand near his waist. If § 87(2)(b) walked toward him, he would push it forward to “nudge” them. He did not strike anyone with his baton. The amount of impact involved in this “nudge” was approximately the same as tapping someone on the shoulder.

DI Romero testified that he did not consider the incident a protest **(40 Board Review)**. He noted that the incident was not planned and therefore there was no plan regarding the use of force. DI Romero was familiar with the tactic that § 87(2)(b) described, identifying it as the “on-guard position.” As part of the tactic, officers are taught to hold their batons with one end in each hand and thrust it forward if they feel physically threatened. He stated that, generally, officers should not use the tactic if no one is using physical force against them. The tactic can also be used for crowd control purposes. In such situations, officers would form a “wedge” or “Y” formation and tell people to move. The goal in such a situation is not to strike civilians but to hold the line so that civilians cannot circumvent the line and officers can move forward. In such instances, you can have a disorderly group as small as 10 people. DI Romero stated that he could not speak to these officers’ use of this tactic because he did not know if § 87(2)(b) was striking them before the situation or whether there was a physical altercation.

At 0:23 minutes in Lt. Duchon’s BWC attached to IA 634, PO Martinez is standing near the intersection of Eastern Parkway and Franklin Avenue **(04 Board Review)**. He is wearing a helmet with his shield number showing and is holding a baton in his hand.

According to his MOS photo, PO Martinez is a 28-year-old Hispanic male, 6’3” tall, 250 pounds, with dark brown hair and brown eyes **(43 Board Review)**.

§ 87(2)(b) provided the investigation with three photos of his bruises taken on June 11, 2020 **(44 Board Review)**. The photos show light bruising to § 87(2)(b)’s left and right arms, as well as a dark bruise on the side of his abdomen, just below his chest.

An Unusual Occurrence Report from the 71st Precinct states that on June 4, 2020, at approximately 11:55 P.M., the front windshield of unmarked vehicle 1858, assigned to Capt. Hepworth was shattered, after an unknown person threw a glass bottle at it in the vicinity of 320 Eastern Parkway **(45 Board Review)**.

NYPD Event § 87(2)(g) shows that at 11:55 P.M., officers sent a radio message for a 10-13U2, or assistance of a police officer at Franklin Avenue and Union Street in regards to “airmail,” **(46 Board Review)**. At 11:57, one male was stopped in front of 895 Franklin Avenue.

At 1:23 minutes in the radio message recording of NYPD Event § 87(2)(g) an officer states that there is “airmail” at Franklin Avenue and Union Street **(47 Board Review)**. The officer adds, “Lots of airmail.”

The investigation obtained NYPD lesson plans, student guides, and training materials for use of force and crowd control trainings that PO Martinez attended **(48 Board Review)**. A July 2015 police student’s guide regarding use of force notes that “impact techniques may be used to protect officers or others against assault. Such techniques include the use of batons and the use of fists and feet. [...] Whenever possible, officers should use the baton rather than their fists or foot. [...] You may use the baton as an instrument of force to steer a disorderly crowd into a designated area; or you may use it to defend your life.” The same guide provides a “Force Options Wheel” that outlines the conditions and recommended force response. The guide states that officers are only to use “impact techniques” like batons, fists, feet, or Conducted Energy Devices if § 87(2)(b) is physically assaulting officers in a manner likely to cause physical injury. The Instructor Guide for a July 2014 Straight Baton Strikes module instructs officers to direct any necessary baton strikes at a civilian’s lower abdomen, buttocks, legs, and feet (except knee joints), forearms, upper arm, shoulder blades, inside of wrist, elbow joint, and/or the backs of hands. Prior to reviewing the element of each baton stance, including the “two handed grip position and blocking technique,” the Student Guide for the same

training states, “Remember, that physical force will only be used as a last resort and consistent with Department policy and the law.”

According to NYPD Patrol Guide Procedure 221-01, officers may use force “when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody,” **(29 Board Review)**. All uses of force “must be reasonable under the circumstances.” When it is “appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. MOS will use only the reasonable force necessary to gain control or custody of a subject.” To determine whether use of force is reasonable, officers should consider the “nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number of subjects in comparison to the number of MOS; size, age, and condition of the subject in comparison to the MOS; subject’s violent history, if known; presence of hostile crowd or agitators; and subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.”

NYPD Patrol Guide Procedure 213-05 describes the duties of members of service at an unusual disorder **(49 Board Review)**. In such situations, officers are to “ensure that only minimum force is used to achieve objective, be tolerant of verbal abuse uttered by civilians.” Officers are to use the “on guard” stance when in a “line or wedge formation.” Those officers assigned to disperse a crowd are to stay in a “line or wedge formation” while dispersing a disorderly crowd.

NYPD Patrol Guide Procedure 203-29 regards individuals who are observing, photographing, or recording a police activity **(50 Board Review)**. According to the procedure, officers are not to interfere with such observing or recording unless “the person(s) is obstructing governmental administration.” Such interference includes “intruding into the physical space necessary to safely perform police operations and refusing to obey an order to move back.”

While PO Martinez testified that he did not specifically recall using force against § 87(2)(b) he did recall likely using the tactic that § 87(2)(b) described to disperse civilians while other civilians were being apprehended in the area where § 87(2)(b) was standing. Additionally, PO Martinez matches § 87(2)(b)'s description of unidentified officer 2. Video footage also shows that he was wearing a navy blue uniform and a helmet at the time, as § 87(2)(b) described. The same footage also shows PO Martinez holding his baton at the approximate time of this incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) the trainings that PO Martinez received and the Patrol Guide indicate that if § 87(2)(b) was too close to the officers while they were trying to apprehend Individual 1, PO Martinez could reasonably have used his baton in the “on guard” position to clear § 87(2)(b) from the area. This is particularly true given the chaotic nature of the scene, which included numerous civilians running and at least one civilian throwing a glass bottle. In such a circumstance, PO Martinez might reasonably have been sufficiently worried for his and other officers’ safety to use force rather than de-escalation techniques to clear the area. However, while PO Martinez testified that § 87(2)(b) was standing less than five feet away from the officers who were apprehending Individual 1, § 87(2)(b) stated he was approximately 10 feet away. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g), § 87(4-b) [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
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§ 87(2)(g), § 87(4-b) [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party **(54 Board Review)**.
- PO Needham has been a member of service for 10 years and has been a subject in three additional cases and six additional allegations, none of which were substantiated. § 87(2)(b)
- PO Martinez has been a member of service for six years and has been a subject in one additional case and two additional allegations, neither of which were substantiated. § 87(2)(b)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- On January 10, 2022, the investigation submitted a request to determine if a Notice of Claim was filed **(55 Board Review)**. Confirmation from the Office of the New York City Comptroller will be forwarded upon receipt.
- § 87(2)(b)

Squad: 1

Investigator:	<u>Rachel Adler</u>	<u>Investigator Rachel Adler</u>	<u>3/4/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Olga Golub</u>	<u>IM Olga Golub</u>	<u>3/4/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date